

APPEAL NO. 032240  
FILED OCTOBER 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 14, 2003. The hearing officer determined that the \_\_\_\_\_, compensable injury does not extend to include sciatic nerve palsy, and that the appellant (claimant) reached maximum medical improvement on November 29, 2001, with a 5% impairment rating (IR).

The claimant appeals, contending that her compensable injury does extend to include sciatic nerve palsy and that her IR should be 37% as assessed by the designated doctor whose report has presumptive weight. The respondent (carrier) responds, urging affirmance.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c)(Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on July 28, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision August 2, 2003. The Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by the Commission rule. Texas Workers' Compensation Commission

Appeal No. 022550, decided November 14, 2002. Commission records reflect that the hearing officer's decision was mailed to the claimant at her then correct address on July 28, 2003. Thus, the deemed date of receipt is August 2, 2003.

The 15th day after the deemed date of receipt of August 2, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Friday, August 22, 2003. The claimant sent her appeal both by facsimile transmission on August 25, 2003, received by the Commission that same date, and by mail, postmarked August 23, 2003, and received by the Commission on August 26, 2003. In that claimant's appeal was neither faxed or mailed on or before August 22, 2003, the claimant's appeal was not timely filed.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Margaret L. Turner  
Appeals Judge